

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FIFER SUPPORT SERVICES LLC ,

Plaintiff,

v.

LYNDON SOUTHERN INSURANCE  
COMPANY,

Defendant.

CASE NO. 2:23-cv-1260

ORDER

**1. INTRODUCTION**

This matter comes before the Court on Defendant Lyndon Southern Insurance Company's ("Lyndon") motion seeking leave to amend its answer. Dkt. No. 21. The Court has considered the papers submitted in support of and opposition to the motion, and being otherwise informed, finds oral argument unnecessary. For the reasons stated below, the Court GRANTS the motion for leave to amend.

**2. BACKGROUND**

Plaintiff Fifer Support Services ("Fifer") owns a gas station in Lynwood, Washington. Dkt. No. 2 ¶ 8. The gas station suffered substantial fire damage, including damage to the fuel pumps, when a fire at the business next door spread.

1 *Id.* ¶ 12. Fifer made an insurance claim to Lyndon—Lyndon’s claims handling is the  
2 subject of this lawsuit, as Fifer sued Lyndon on August 21, 2023, for breach of  
3 contract, violation of the Insurance Fair Conduct Act, violation of the Washington  
4 Consumer Protection Act, bad faith, and negligence. *See generally* Dkt. No. 2.  
5 Lyndon answered Fifer’s complaint but did not assert fraud or misrepresentation as  
6 affirmative defenses. Dkt. No. 12 at 7-8.

7 Lyndon served requests for production on Fifer. Dkt. No. 21 at 2. Fifer  
8 eventually responded, producing two photos of emails with Dover Corporation, a  
9 third party. *Id.* Sometime between March 15 and 29, 2024, Lyndon subpoenaed  
10 Dover’s holding company, Wayne Fueling Systems (“Wayne”), for all relevant  
11 documents involving Fifer. *Id.* Wayne produced responsive documents, including a  
12 third email that Fifer had not produced. *Id.* According to Lyndon, this third email  
13 “indicate[d] that [Fifer] was requesting ... [that Dover’s] support team member  
14 ‘amend’ his answers to recommend replacement of the fuel pumps that are the  
15 subject of [Fifer’s] insurance claim.” Dkt. No. 21 at 3.

16 On April 9, 2024, believing Fifer should have produced it, Lyndon asked Fifer  
17 about the third email to see whether it was withheld as privileged. Dkt. Nos. 28 at  
18 4; 21 at 3. At a Rule 26(i) discovery conference a few days later, Fifer indicated that  
19 the document was not intentionally withheld and that it would search its records  
20 once again for all documents responsive to Lyndon’s discovery requests. Dkt. No. 28  
21 at 4. Fifer supplemented its discovery responses on April 17, but it still did not  
22 produce the third email. Dkt. No. 21 at 3. Lyndon inquired again about the missing  
23

1 email, but again, Fifer failed to include the third email in yet another supplemental  
2 production on April 30. *Id.* at 4; Dkt. No. 28 at 5.

3 On May 13, Lyndon moved to compel and for leave to amend its answer, the  
4 same date as the deadline for amending pleadings. *See* Dkt. Nos. 21, 23; 16 at 1.  
5 Fifer's owner and principal, Dr. Stephen Adedotun Adekoya, discovered four more  
6 emails, which Fifer produced to Lyndon on May 20. Dkt. No. 28 at 5-6.

7 Fifer incorrectly asserts that Lyndon's motion is untimely. Dkt. No. 28 at 9.  
8 That Lyndon moved to amend by the deadline, even if it was on the last day to file,  
9 makes the motion timely. *Green v. Bishop*, No. C10-5206-BHS, 2010 WL 4690884,  
10 at \*1 (W.D. Wash. 2010) (finding motion for leave to amend filed on the deadline set  
11 by the court was timely); *ING Bank, fsb v. Wah*, No. C09-1458-JCC, 2010 WL  
12 11691443, at \*1-2 (W.D. Wash. 2010) (same); *Wash. Cities Ins. Auth. v. Ironshore*  
13 *Indem., Inc.*, No. 2:19-CV-00054-RAJ, 2020 WL 6685169, at \*2 (W.D. Wash. 2020)  
14 (indicating that courts consider the date the motion seeking leave to amend was  
15 filed and not the noting date of the motion itself).

### 16 3. DISCUSSION

#### 17 3.1 Legal standard.

18 Because Lyndon's motion for leave to amend is timely, the Court must decide  
19 under Rule 15 whether leave to amend should be permitted. Under Rule 15(a), leave  
20 to amend must be given freely as required by justice. *Carvalho v. Equifax Info.*  
21 *Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010). "This policy is 'to be applied with  
22 extreme liberality.'" *Neaman v. Wash. State Dep't of Corr.*, No. C24-5176 BHS, 2024  
23

1 WL 3845710, at \*1 (W.D. Wash. 2024) (quoting *Eminence Cap., LLC v. Aspeon, Inc.*,  
2 316 F.3d 1048, 1051 (9th Cir. 2003)). Courts consider five factors when determining  
3 whether to grant leave to amend under Rule 15: “bad faith, undue delay, prejudice  
4 to the opposing party, futility of amendment, and whether the [party] has  
5 previously amended [its pleadings].” *United States v. Corinthian Colls.*, 655 F.3d  
6 984, 995 (9th Cir. 2011). Of these factors, “prejudice to the opposing party carries  
7 the greatest weight.” *Neaman*, No. C24-5176 BHS, 2024 WL 3845710, at \*1.

### 8 **3.2 Lyndon satisfies the Rule 15 factors for leave to amend.**

9 Fifer raises only two of the five Rule 15(a) factors, asserting that Lyndon acts  
10 in bad faith and that granting it leave to amend would be futile. Because Fifer does  
11 not challenge the remaining Rule 15(a) factors—undue delay, prejudice to the  
12 opposing party, or previous amendments—the Court assumes that Lyndon’s claims  
13 about these factors have merit and favor amendment. Thus, the Court focuses only  
14 on the challenged factors.

15 Fifer argues that Lyndon acts in bad faith and that the amendment is futile  
16 “because the inadvertently withheld email correspondence on which the Motion to  
17 Amend is based[,] does not evidence fraud or misrepresentation.” Dkt. No. 28 at 13.  
18 To Fifer, “the language of those emails shows only repeated requests for additional  
19 details and clarity—not a change in opinion.” *Id.* Further, Fifer argues that it did  
20 not withhold the emails intentionally, but that they were withheld as the result of a  
21 “technical error.” *Id.* at 14. Essentially, Fifer argues that Lyndon’s claims of  
22 misrepresentation and fraud are a losing endeavor. Fifer’s arguments, however,  
23 miss the mark under Rule 15.

1 A party acts in bad faith when it acts with intent to deceive, harass, mislead,  
2 delay, or disrupt. *Wizards of the Coast LLC v. Cryptozoic Ent. LLC*, 309 F.R.D. 645,  
3 651 (W.D. Wash. 2015) (citing *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961 (9th Cir.  
4 2006); *In re Ezzell*, 438 B.R. 108, 117–18 (Bkrtcy. S.D. Tex. 2010)). Bad faith is more  
5 than acting in bad judgment or negligence, and “implies the conscious doing of a  
6 wrong because of [a] dishonest purpose or moral obliquity. . . . [I]t contemplates a  
7 state of mind affirmatively operating with furtive design or ill will.” *United States v.*  
8 *Manchester Farming P’ship*, 315 F.3d 1176, 1185 (9th Cir. 2003). Absent bad faith,  
9 “[a] party should be afforded an opportunity to test [their] claim on the merits  
10 rather than on a motion to amend unless it appears beyond doubt that the proposed  
11 amended pleading would be subject to dismissal.” *Mahone v. Pierce Cnty.*, No. C10-  
12 5847-RBL-KLS, 2011 WL 2009740, at \*2 (W.D. Wash. 2011).

13 Fifer does not show outright evidence that Lyndon seeks amendment for  
14 some impermissible purpose or motive. Instead, Fifer asks the Court to infer that  
15 Lyndon is acting in bad faith because, in Fifer’s view, Lyndon’s claims are so lacking  
16 in merit that they can be borne only from ill intent. But on this record, the merits of  
17 Lyndon’s proposed amendment do not appear to be so in doubt as to be futile or  
18 sought in bad faith. Fifer may challenge the sufficiency of Lyndon’s claims through  
19 a motion to strike, *see* Fed. R. Civ. P. 12(f), or summary judgment, *see* Fed. R. Civ.  
20 P. 56, but its challenges to Lyndon’s Rule 15 motion are unpersuasive.

21 Thus, the Court finds that the weight of the five-factor balancing test under  
22 Rule 15, tilts in favor of amendment.  
23

4. CONCLUSION

In sum, the Court GRANTS Lyndon's motion to amend its answer to add affirmative defenses, Dkt. No. 21, as shown in its proposed First Amended Answer and Affirmative Defenses, Dkt. No. 21-2, within seven days of this order.

Dated this 20th day of November, 2024.

A handwritten signature in black ink, appearing to read "Jamal W", is written over a solid black horizontal line.

Jamal N. Whitehead  
United States District Judge